

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MARCEL EUGENE THOMAS,

Plaintiff,

v.

PERRY RUSSELL,

Defendant.

Case No. 3:21-cv-00104-MMD-WGC

ORDER

**I. DISCUSSION**

This action began with a *pro se* civil rights complaint filed under 42 U.S.C. § 1983 by Plaintiff Marcel Eugene Thomas, a former state prisoner. On September 16, 2021, this Court issued an order directing Thomas to file his updated address and a non-prisoner application to proceed *in forma pauperis* with this Court within 30 days. (ECF No. 3.) The 30-day period has now expired, and Thomas has not filed his updated address, filed a non-prisoner application to proceed *in forma pauperis*, or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone*

1 *v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to  
2 comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)  
3 (affirming dismissal for lack of prosecution and failure to comply with local rules).

4 In determining whether to dismiss an action for lack of prosecution, failure to obey  
5 a court order, or failure to comply with local rules, the court must consider several factors:  
6 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
7 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
8 disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
9 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at  
10 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

11 Here, the Court finds that the first two factors, the public's interest in expeditiously  
12 resolving this litigation and the Court's interest in managing the docket, weigh in favor of  
13 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of  
14 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay  
15 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*  
16 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring  
17 disposition of cases on their merits—is greatly outweighed by the factors in favor of  
18 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey  
19 the court's order will result in dismissal satisfies the "consideration of alternatives"  
20 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d  
21 at 1424. The Court's order requiring Thomas to file his updated address and file a non-  
22 prisoner application to proceed *in forma pauperis* with the Court within 30 days expressly  
23 stated: "IT IS FURTHER ORDERED that, if Plaintiff fails to timely comply with this order,  
24 the Court will dismiss this case without prejudice." (ECF No. 3 at 2.) Thus, Thomas had  
25 adequate warning that dismissal would result from his noncompliance with the Court's  
26 order to file his updated address and a non-prisoner application to proceed *in forma*  
27 *pauperis* within 30 days.

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It is therefore ordered that this action is dismissed without prejudice based on Thomas's failure to file an updated address and a non-prisoner application to proceed *in forma pauperis* in compliance with this Court's September 16, 2021, order.

DATED THIS 26<sup>th</sup> Day of October 2021.

MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE